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BEFORE THE ARIZONA CORPORATION COMMISSION

2011 JUL 18 P 4:36

Arizona Corporation Commission

COMMISSIONERS

GARY PIERCE, Chairman

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AZ CORP COMMISSION
DOCKET CONTROL

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JUL 18 2011

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IN THE MATTER OF THE
APPLICATION OF BLACK MOUNTAIN
SEWER CORPORATION, AN ARIZONA
CORPORATION, FOR A
DETERMINATION OF THE FAIR
VALUE OF ITS UTILITY PLANT AND
PROPERTY AND FOR INCREASES IN
ITS RATES AND CHARGES FOR
UTILITY SERVICE BASED THEREON.

NO. DOCKET NO. SW-02361A-08-0609

**BOULDERS HOMEOWNERS'
ASSOCIATION'S RESPONSE TO
MOTION TO INTERVENE**

The Boulders Homeowners' Association ("BHOA"), by and through undersigned counsel, submit this Response to Motion to Intervene filed by The Boulders Resort ("Resort"). BHOA opposes the Resort's Motion to Intervene to the extent it attempts to unduly broaden the scope of the proceeding.

The Resort characterizes Decision No. 71865 as having "approved" the Settlement Agreement, and characterizes BHOA's Motion as requesting the Commission rewrite that Settlement Agreement. However, Decision No. 71865 does not explicitly "approve" of the Settlement. Rather, it merely finds that the Settlement Agreement is "a reasonable resolution" of ongoing odor concerns, and adopts the recovery mechanism described in the Settlement Agreement (with some minor modifications). To the extent that the Resort's intervention seeks a consideration of whether the Settlement Agreement should be "modified" or "rewritten," it attempts to broaden the scope of the proceeding.

The Resort posits that BHOA's Motion for Plant Closure Order "seeks to deprive the Boulders of important contractual rights without due process." Motion to Intervene at

2. The Resort's Motion to Intervene suggests that it intends to ask the Commission to

1 determine the contractual right between BMSC and Resort, specifically whether BMSC
2 has obligation under the Effluent Agreement to replace the effluent from the Treatment
3 Plant if "regulatory changes require [BMSC] to close" the Treatment Plant. Motion to
4 Intervene at 4-5. Construction of rights and obligations of the parties to the Effluent
5 Agreement, a contract, is a judicial function, and the courts, not the Commission, have the
6 jurisdiction to determine. See, *Trico Electric Cooperative v. Ralston*, 67 Ariz. 358, ___,
7 496 P.2d 470, 474 (1948). To the extent the Resort's Motion to Intervene attempts to
8 broaden the scope of the proceeding to include a determination of the rights of the parties
9 the Effluent Agreement, BHOA objects.

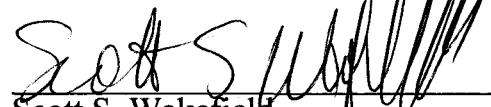
10 The Resorts' Motion to Intervene makes certain other factual statements with
11 which BHOA does not agree; however, it is not necessary for the Commission to
12 determine those facts at this time (or perhaps ever). BHOA's failure to object to the
13 Resort's factual representations herein should not be considered a waiver of its right to
14 object at a later time if necessary.

15 If the Commission grants the Resort's Motion to Intervene, BHOA recommends
16 that the Commission schedule a procedural conference to address the scope of the
17 proceeding.

18 Dated this 18th day of July, 2011.

19 RIDENOUR, HIENTON, & LEWIS P.L.L.C.

20 By

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